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No. 02-281

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In the
SUPREME COURT OF THE UNITED STATES
October Term, 2002

INYO COUNTY, A PUBLIC ENTITY; PHILLIP McDOWELL, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS DISTRICT ATTORNEY OF INYO COUNTY; AND DANIEL LUCAS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SHERIFF OF THE COUNTY OF INYO,
*Petitioners*,

v.

PAIUTE-SHOSHONE INDIANS OF THE BISHOP COMMUNITY OF THE BISHOP COLONY; AND BISHOP PAIUTE GAMING CORPORATION
*Respondents*.

# AMICUS CURIAE BRIEF IN SUPPORT OF INYO COUNTY BY THE LOS ANGELES COUNTY DISTRICT ATTORNEY ON BEHALF OF LOS ANGELES COUNTY, THE CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES

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20 pp

TABLE OF CONTENTS


PAGES

INYO COUNTY BY THE LOS ANGELES COUNTY DISTRICT ATTORNEY ON BEHALF OF LOS ANGELES COUNTY, THE CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES . . . . . 1

INTEREST OF AMICUS CURIAE . . . . . 2

SUMMARY OF ARGUMENT . . . . . 4

ARGUMENT . . . . . 5

I. PUBLIC LAW 280 CONFERRED AUTHORITY UPON CALIFORNIA TO PROSECUTE FELONIES OCCURRING IN INDIAN COUNTRY OR INVOLVING INDIAN DEFENDANTS OR VICTIMS . . . . . 6

A. Sovereignty Of Indian Tribes Is Subject To Subject ToThe Powers Of Congress And May Be Limited By Congress . . . . . 6

B. California Has Jurisdiction And The Duty To Prosecute Welfare Fraud Committed On Or Outside Indian Land Within The State Of California . . . . . 9

II. THE AUTHORITY TO PROSECUTE INCLUDES THE AUTHORITY TO CONDUCT INVESTIGATIONS AND PREPARE FOR PROSECUTION . . 11

CONCLUSION . . . . . 15

TABLE OF AUTHORITIES


| CASES | PAGES |
|---|---|
| Anderson v. Gladden, 293 F.2d 463, 467-468 (9th Cir. 1961) | 7 |
| Bishop Paiute Tribe v. County of Inyo, 275 F.3d 893, 911, fn. 5 (9th Cir.Cal. 2002) | 14 |
| California v. Cabazon Band of Mission Indians, 480 U.S. 202, 212, 107 S.Ct. 1083, 94 L.Ed.2d 244 (1987) | 9 |
| Morton v. Mancari, 417 U.S. 535, 551 (1974) | 6 |
| Nevada v. Hicks, 533 U.S. 353, 121 S.Ct. 2304, 150 L.Ed.2d 398 (2001) | 4, 8, 12, 13 |
| Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe (1991) | 14 |
| People v. Flanagan, 185 Cal.App.3d 764, 771 (Cal.App. 5th Dist. 1986) | 10 |
| People v. Fleming, 29 Cal.3d 698, 703-707 (1981) | 12 |
| People v. Miranda, 106 Cal.App.3d 504, 506 (1980) | 7 |
| Robinson v. Wolff, 349 F.Supp. 514 (D.C. Neb. 1972) | 6 |
| Ross v. Neff, 905 F.2d 1349, 1352 (10th Cir. Okla. 1990) | 13, 14 |
| Santa Clara Pueblo v. Martinez, 436 U.S. 49, 56 (1978) | 6 |
| Sycuan Band of Mission Indians v. County of San Diego, et al., 788 F.Supp. 1498 (S.D.Cal. 1992) | 11, 12 |
| Talton v. Mayes, 163 U.S. 376, 384 (1896) | 6 |
| United States v. Baker, 894 F.2d 1144 (10th Cir. 1990) | 13 |
| Winton v. Amos, 255 U.S. 373, 391 (1921) | 6 |
| **CALIFORNIA GOVERNMENT CODE** | |
| Government Code, section 26500 (West 1988) | 2 |
| **CODE AND STATUTE** | |
| **Welfare and Institutions Code** | |
| Section 10980, subdivision (c) | 9 |
| **RULES OF COURT** | |
| Supreme Court Rule 37.2, subdivision (a) | 2 |
| Supreme Court Rule 37, subdivisions 3(a) and 4 | 1 |

MISCELLANEOUS

Crimes and Criminal Procedure 18 U.S.C., § 1162 6

Title 18 U.S.C., § 1162 (2001) 6

Title 18 U.S.C., § 1162, part (c) 7

18 U.S.C.A., § 1162 7

**Other Statutes**

General Crimes Act (18 U.S.C. § 1152) 8

Los Angeles County Charter section 25 (1995) 1

Major Crimes Act (18 U.S.C., § 1153) 8

Public Law 280 4, 6-8, 9, 11-14



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Amicus curiae, Steve Cooley, District Attorney for the County of Los Angeles, State of California, submits this brief for filing as the authorized law officer of the county, and on behalf of the California District Attorneys Association and the California State Association of Counties, pursuant to Supreme Court Rule 37, subdivisions 3(a) and 4.[1]

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1. Los Angeles County Charter section 25 (1995) states:
"Each County officer, Board or Commission shall have the powers and perform the duties now or hereafter prescribed by general law, and by this charter as to such officer, Board or Commission." It is provided in the California general (continued...)

## INTEREST OF AMICUS CURIAE

There are 107 federally recognized Indian tribes and 95 Federal Indian reservations in the state of California with about 40 more Indian groups seeking to gain federal recognition. In 2000, according to the U.S census there are 220,657 American Indians living in California.[2]

The District Attorney of Los Angeles County, his fellow fifty-seven (57) other elected district attorneys in this state, as well as the fifty-eight (58) counties represented by the California State Association of Counties are very concerned with Ninth Circuit's decision in this case. There are now numerous Indian casinos on Indian territories within the state of California. Each of these casinos already represent potential serious trouble spots for law enforcement officers throughout the state. If the law as set forth in this
decision is allowed to remain, all persons who use and patronize these casinos will be at risk because trained law enforcement authorities are in effect persona non grata, and worse yet, sheriffs

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1. (...continued)
law that:"The district attorney is the general prosecutor, except as otherwise provided by law. The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for the public offenses." Cal. Government Code, section 26500 (West 1988).

The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state.

The California District Attorneys Association is a California prosecutorial organization counting among its 2400 members, all of the 58 elected District Attorneys in California. CDAA's Appellate Committee takes a proactive stance on matters of statewide concern to prosecutors.

Copies of the consent letters have been filed with the Clerk of the Court pursuant to Supreme Court Rule 37.2(a).

2. San Diego State University, *California Indians* (visited Oct.15, 2002) <http://infodome.sdsu.edu/research/guides/calindians/calind.shtml>



and district attorneys who venture into Indian enclaves to enforce the law will be subject to debilitating civil lawsuits.

The decision by the Ninth Circuit, if not reversed by this Court, could result in the growing number of tribal casinos in California becoming completely isolated from any state and county law enforcement efforts or processes. We are all aware of the rapid mobility automobiles have provided to criminals. Counties with Indian casinos have an urgent need to protect the neighborhoods adjacent to the reservations and the Indians. Even the counties in California without Indian Casinos have a strong interest in preventing fugitive flight to neighboring counties with tribal casinos. If criminals can conceal themselves, evidence, and proceeds of crimes in casinos without any fear of disclosure, this will have a substantial negative effect on the criminal justice system for Indians and non-Indians alike. The decision by the Ninth Circuit has effectively established the foundation of extra-judicial enclaves within one hour driving distances of immense urban areas, including San Francisco, Los Angeles and San Diego. Los Angeles County is within an easy two hour driving radius of many Indian casinos in Riverside, San Bernardino and San Diego counties. There are also Indian groups in Los Angeles County such as the Gabrielino/Tongva Tribal Council in Covina seeking Federal recognition. It is foreseeable that future Indian casinos could be established within twenty-five minutes driving time from downtown Los Angeles. All Indian casinos seek to attract non-Indian customers, customers who are largely unaware that they are entering an enclave isolated from any state and county law enforcement protection.

If property owned by tribal governments is immune from lawful execution of search warrants or subpoenas, the potential impact on law enforcement throughout the state, not just in Indian country, could be substantial. If law enforcement authorities are required to enforce state laws in Indian country, they cannot be made to relinquish the necessary tools for enforcement. To do so would be to render the justice system a hollow illusion in Indian country. Stolen money could be laundered, evidence could be hidden, and fugitives could become immune from lawful process. The vacuum created by the absence of law enforcement creates an environment where predators may flourish. The resulting problems could not

be hermetically sealed from the neighboring communities even with a perimeter wall and a Brandenburg gate. The real potential for chaos is not mere speculation. In 1995 Lake county in California was thrust into turmoil as nearly seventy people fled the Elem Indian Colony when gun battles erupted over disputed casino profits. Nine people were wounded, five Indian houses were torched and other houses were boarded up as a shield against gunfire. Numerous arrests were made. Peace was not restored to the one hundred member reservation until sheriff's deputies entered the reservation to restore order. The Elem Indian Colony is only ninety miles from San Francisco.[3] Even potential terrorist activity would be immune. Federal authority over state crime has been completely consigned to the states in Public Law 280 states. The protection sought by the tribal leaders against unreasonable searches and abuse of process is equally available to all Americans but requires that Indian tribes, like everyone else, submit to the law of the land.

Amicus, through this brief has focused on the this limited issue, with the hope of providing assistance to the Court.

## SUMMARY OF ARGUMENT

When Congress passed Public Law 280 in 1953, it consigned authority to enforce criminal law in Indian Country to six states including California. As one of the fifty states, California has an inherent right to prosecute crimes in California outside Indian Country. The Ninth Circuit in their decision on this case seemingly recognized this legislation but then decided that the six states are to be denied the tools necessary to enforce the law. In doing so, it disregarded common sense and the opinion of this Court in *Nevada v. Hicks,* 533 U.S. 353, 121 S.Ct. 2304, 150 L.Ed.2d 398 (2001).

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3. Kathleen Sullivan, *Pomo Indian truce shaky, as factions return*, SAN FRANCISCO EXAMINER, October 25,1995, 1995 at A-11.

*A Year After Violence, Reservation Looks to Heal with Election*, Associated Press, Nov. 29, 1996, available in LEXIS, Nexis Library, US News Combined File.



Since the state has the authority and duty to prosecute crimes in Indian Country, the authority for the preliminary procedures in support of that process is necessarily mandated. This is already established for crimes outside the reservation. To hold otherwise would be to render the duty to prosecute crimes in Indian Country an empty shell. These enclaves would permit evidence of all crimes, both on and off the reservation, to be concealed. Perpetuating the reasoning of this Ninth Circuit decision will expose the Indian residents of California reservations to increased danger from violent crime as the chilling effect upon law enforcement grows. If law enforcement officers are loathe to execute search warrants on tribal property due to fear of liability, they will be also reluctant to arrest and investigate crimes. The theoretical ability to prosecute criminals who commit robbery at a casino is meaningless without the power to subpoena the victim clerk or issue a subpoena duces tecum for relevant records in an embezzlement case. Ironically, this application of the concept of sovereignty leaves the supposed beneficiaries of this doctrine, the Indians, most vulnerable to violence and exploitation. If an Indian man beats his wife in a casino parking lot monitored by video cameras, and she is rendered comatose by the beating, the only evidence, the video tape, available to prosecute this man would be denied to the responsible authorities. If an Indian was being falsely accused of the same type of offense, the only exculpatory evidence could also be withheld by the tribe claiming sovereignty.

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## ARGUMENT

### I. PUBLIC LAW 280 CONFERRED AUTHORITY UPON CALIFORNIA TO PROSECUTE FELONIES OCCURRING IN INDIAN COUNTRY OR INVOLVING INDIAN DEFENDANTS OR VICTIMS

#### A. Sovereignty Of Indian Tribes Is Subject To The Powers Of Congress And May Be Limited By Congress

The sovereignty of Indian tribes is subject to the broad powers of Congress to regulate.[4] The Supreme Court has recognized that this power is plenary and that Congress has exclusive authority over Indians and tribal property.[5] This authority can be delegated to the states and was so in 1953 when Congress passed Public Law 280. Crimes and Criminal Procedure 18 U.S.C., § 1162; *Robinson v. Wolff*, 349 F.Supp. 514 (D.C. Neb. 1972), aff'd., 468 F.2d 438 (8th Cir. Neb. 1972). This act granted six states, including California, criminal jurisdiction over persons who commit crimes or who are victims of crimes in Indian country. Title 18 U.S.C., § 1162 (2001), provides in pertinent part:

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4. See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978) (ruling that "Congress has plenary authority to limit, modify, or eliminate the powers of local self-government which the tribes otherwise possess"); *Morton v. Mancari*, 417 U.S. 535, 551 (1974) (basing plenary power on treaty history with Indians and their guardianship status with the United States); *Winton v. Amos*, 255 U.S. 373, 391 (1921) (asserting that Congress has plenary power to legislate issues of tribal property because of the dependent relationship the Indians have with the U.S. Government); see also *Talton v. Mayes*, 163 U.S. 376, 384 (1896) (asserting that tribal sovereignty is subject to the "supreme legislative authority of the United States").

5. See Laurence M. Hauptman, Congress, Plenary Power, and the American Indian, 1870 to 1992, in Exiled in the Land of the Free: Democracy, Indian Nations, and the U.S. Constitution, 317, 318 (Oren R. Lyons et al. eds., 1992) (defining the doctrine as that which allows Congress "to unilaterally intervene and legislate over a wide range of Indian affairs, including the territory of Indian Nations").



> State jurisdiction over offenses committed by or against Indians in the Indian country
>
> (a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory *to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:* . . . Alaska, Minnesota, Nebraska. Oregon, Wisconsin and California.

(Italics added.)

When Congress enacted Public Law 280, nothing more was required from the six named states to assume jurisdiction over crimes committed in Indian country. 18 U.S.C.A., § 1162; see *People v. Miranda,* 106 Cal.App.3d 504, 506 (1980) [no state legislation necessary to assume jurisdiction under Public Law 280 since states already had either concurrent or residual jurisdiction over offenses committed on Indian lands within their territory]; cf. *Anderson v. Gladden*, 293 F.2d 463, 467-468 (9th Cir. 1961), *cert. den.*, 368 U.S. 949 (1961) [no affirmative action required by Oregon to assume jurisdiction in Indian country even where there was a prior treaty between the tribe and the Federal government providing for Federal prosecution]. At the same time, Congress consigned the authority to prosecute crimes in Indian country to the six states pursuant to part (c) of 18 U.S.C., § 1162:

> (c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

Prior to 1953, Congress had enacted two statutes which established Federal authority to prosecute crimes in Indian Country. These statutes are known as the General Crimes Act and the Major

Crimes Act[6]. The Major Crimes Act delineates state and federal Jurisdiction in states other than the six designated in Public Law 280 (which includes California). Public Law 280 explicitly withdrew federal law enforcement from those six states, relegating to the states exclusive jurisdiction over crimes committed in Indian country.

This Court recently addressed this issue in *Nevada v. Hicks*, 533 U.S. 353. In that case, the tribal court attempted to exercise jurisdiction through a Federal tort action against state officials who served a search warrant on tribal land. In denying the tribal court jurisdiction, the Court discussed the sovereignty issue.

> Our cases make clear that the Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation. State sovereignty does not end at a reservation's border. Though tribes are often referred to as "sovereign" entities, it was "long ago" that "the Court departed from Chief Justice Marshall's view that 'the laws of [a State] can have no force' within reservation boundaries. *Worcester v. Georgia*, 6 Peters 515, 561 (1832)," *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 141, 65 L.Ed.2d 665, 100 S.Ct. 2578 (1980). "Ordinarily," it is now clear, "an Indian reservation is considered part of the territory of the State." U.S. Dept. of Interior, Federal Indian Law 510, and n. 1 (1958), citing *Utah & Northern R. Co. v. Fisher*, 116 U.S. 28 (1885); see also *Organized Village of Kake v. Egan*, 369 U.S. 60, 72, 7 L.Ed.2d 573, 82 S. Ct. 562 (1962)

*Id.* at 361-362, fn. omitted.

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6. The General Crimes Act (18 U.S.C. § 1152), enacted in 1817, generally provided for Federal prosecution of interracial crimes in Indian country, but precluded Federal prosecution where an Indian was already being prosecuted under tribal law.

The Major Crimes Act (18 U.S.C. § 1153) was enacted in 1885 and provided for Federal concurrent jurisdiction over Indians for enumerated crimes. This statutory structure allowed for either tribal prosecution or Federal prosecution, or both. (*United States v. Wheeler* 435 U.S. 313, 325, 98 S.Ct. 1079, 55 L.Ed.2d 302 (1978).)



## B. California Has Jurisdiction And The Duty To Prosecute Welfare Fraud Committed On Or Outside Indian Land Within The State Of California

Since the passage of Public Law 280, there has been some litigation as to what acts fall under State jurisdiction and what acts are subject to regulation by tribal authorities. In *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 212, 107 S.Ct. 1083, 94 L.Ed.2d 244 (1987), the Court ruled that an attempt by Riverside County to enforce California Penal Code provisions regulating poker and bingo inside reservation boundaries was an unauthorized extension of state civil regulatory power not granted under Public Law 280. In so holding, the Court declared that when a state tries to enforce one of its laws in Indian country, it must first determine if the law is, by nature, civil/regulatory or criminal/prohibitory. *Id.* at 208. In *Cabazon*, the law was found to be merely civil/regulatory and therefore unenforceable by state authorities on the reservation. In determining whether the specific law was civil/regulatory or criminal/prohibitory, the Court sought to determine if the specific conduct was a subset of other permitted conduct or whether it was prohibited throughout the state. In *Cabazon*, the Court determined that since bingo is an authorized activity by charitable organizations and gambling is permitted at horse race tracks and through the state lottery, these specific violations were civil/regulatory rather than criminal/prohibitory. *Id.* at 210-211.

In this case involving the Bishop Paiute Tribe, the specific state law sought to be enforced is California Welfare & Institutions Code, section 10980, subdivision (c).[7] This section provides for

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7. Section 10980 provides:

> (a) Any person who, willfully and knowingly, with the intent to deceive, makes a false statement or representation or knowingly fails to disclose a material fact in order to obtain aid under the provisions of this division or who, knowing he or she is not entitled thereto, attempts to obtain aid or to continue to receive aid to which he or she is not entitled, or to receive a larger amount than that to which he or she is legally entitled, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period of not more than six months,by a fine of not more than five

(continued...)

potential state prison sentences where fraud and deceit are employed in the unlawful collecting of welfare. Misconduct involving forgery or fraud "inherently involves dishonesty and readiness to lie, and thus involves moral turpitude." *People v. Flanagan*, 185 Cal.App.3d 764, 771 (Cal.App. 5th Dist. 1986). In none of the cases interpreting *Cabazon* has a crime involving moral turpitude been defined as merely regulatory and beyond the states' purview of enforcement. When the crime requires fraud or deceit, as does welfare fraud, there is no doubt it is criminal/prohibitory and subject to state jurisdiction.

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7. (...continued)

hundred dollars ($ 500), or by both imprisonment and fine.

(b) Any person who knowingly makes more than one application for aid under the provisions of this division with the intent of establishing multiple entitlements for any person for the same period or who makes an application for that aid for a fictitious or nonexistent person or by claiming a false identity for any person is guilty of a felony, punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($5,000), or by both imprisonment and fine; or by imprisonment in the county jail for a period of not more than one year, or by a fine of not more than one thousand dollars ($ 1,000), or by both imprisonment and fine.

(c) Whenever any person has, by means of false statement or representation or by impersonation or other fraudulent device, obtained or retained aid under the provisions of this division for himself or herself or for a child not in fact entitled thereto, the person obtaining this aid shall be punished as follows:

(1) If the total amount of the aid obtained or retained is four hundred dollars ($ 400) or less, by imprisonment in the county jail for a period of not more than six months, by a fine of not more than five hundred dollars ($ 500), or by both imprisonment and fine.

(2) If the total amount of the aid obtained or retained is more than four hundred dollars ($ 400), by imprisonment in the state prison for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($ 5,000), or by both imprisonment and fine; or by imprisonment in the county jail for a period of not more than one year, by a fine of not more than one thousand dollars ($ 1,000), or by both imprisonment and fine.



## II. THE AUTHORITY TO PROSECUTE INCLUDES THE AUTHORITY TO CONDUCT INVESTIGATIONS AND PREPARE FOR PROSECUTION

The authority to prosecute criminal laws in Indian country required in Public Law 280 must necessarily include the authority to investigate and utilize the search warrant to effectively litigate a case. As discussed by the district court in *Sycuan Band of Mission Indians v. County of San Diego, et al.*, 788 F.Supp. 1498 (S.D.Cal. 1992), aff'd, 38 F.3d 402 (9th Cir.Cal 1994), this authority was affirmed by comparing the alternative scenario where there was no authority to issue a search warrant. In *Sycuan*, the state was seeking to prosecute the possession of gaming machines. Since this was determined to be a civil/regulatory class of offenses and *not* subject to state prosecution,[8] logically there was no authority to issue a search warrant where the state lacked the authority to prosecute any charges based on evidence resulting from that warrant. The district court stated, "[a] state is without authority to engage in preliminary law enforcement activities if the state is without jurisdiction to prosecute a violation." *Id.* at 1507. To hold otherwise would render the authority to prosecute crimes in Indian country meaningless if the traditional tools for prosecutors were left at the gates to Indian country. As an example, a robbery committed against an Indian casino employee inside the casino could not be prosecuted if the prosecutor is unable to subpoena the victim casino employee. Likewise, embezzlement committed against a tribe's casino could not be prosecuted if a prosecutor cannot issue a subpoena duces tecum for casino records for use in the prosecution of an embezzler. If there is located inside a casino, which is owned by the tribe, exculpatory or inculpatory evidence in a case where the state has the authority to prosecute, the casino and its owner/employees are subject to the same laws as the rest of the state. But, they also enjoy the same Constitutional protections. A murder suspect who flees to an Indian casino cannot expect sanctuary or that evidence of his crime will find a safe repository, but he can expect a lawful arrest. To permit casinos to become enclaves immune from the execution of

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8. Subject only to federal regulation.

lawful search warrants will result in condemning Indian casinos to inordinate pressure from organized crime to conceal evidence and proceeds from criminal activities.

The District Court in the *Sycuan* case went further and added overly expansive dicta suggesting that a sheriff exceeds his jurisdiction by serving a warrant on tribal land inside his county. *Sycuan Band of Mission Indians v. County of San Diego, et al.*, 788 F.Supp. at 1508. The District Court was incorrect in that assessment. California magistrates have the authority to issue search warrants to peace officers in their counties to search anywhere in the state. *People v. Fleming*, 29 Cal.3d 698, 703-707 (1981). A sheriff enforcing criminal/prohibitory laws pursuant to state law is executing authority granted to the states by Public Law 280. If he is attempting to enforce civil/regulatory laws, the sheriff could be acting outside that authority. To hold otherwise would result in depriving all people in Indian country in the six Public Law 280 states of any protection under the states' criminal justice system.

The authority of the state to execute search warrants in Indian country was clearly explained in the majority opinion in *Nevada v. Hicks, supra*, 533 U.S. 353. The Court stated that the process of state courts may extend to an Indian reservation where there is subject-matter or controversy within their cognizance. The Court went on to explain:

> The Court's references to "process" . . . , and the Court's concern . . . over possible federal encroachment on state prerogatives, suggest state authority to issue search warrants in cases such as the one before us. ("Process" is defined as "any means used by a court to acquire or exercise its jurisdiction over a person or over specific property," Black's Law Dictionary 1084 (5th ed. 1979), and is equated in criminal cases with a warrant, *id.* at 1085.) This makes perfect sense, since, as we explained in the context of federal enclaves, *the reservation of state authority to serve process is necessary to "prevent [such areas] from becoming an asylum for fugitives from justice."* [Citation.]



*Id.* at 363-364, italics added.

This Court applies the same Constitutional protections all Americans enjoy to those living in Indian country in California. The Court forcefully stated this position:

> We do not say state officers cannot be regulated; we say they cannot be regulated in the performance of their law-enforcement duties. Action unrelated to that is potentially subject to tribal control. . . . Moreover, even where the issue is whether the officer has acted unlawfully in the performance of his duties, the tribe and tribe members are of course able to invoke the authority of the Federal Government and federal courts (or the state government and state courts) to vindicate constitutional or other federal-and state-law rights.

*Nevada v. Hicks*, 533 U.S. at 373.

To hold otherwise, would serve as a clarion call to all criminals, announcing a judicial vacuum and inviting potential anarchy, since the state would lose the necessary tools to prosecute serious felonies and the Federal government now lacks the authority to do so, having consigned it to the states.

While addressing the issue of qualified immunity as to the officers serving the search warrant, the Ninth Circuit included a dismissive footnote suggesting that the authority of the states to execute search warrants had already been clearly decided against local law enforcement. In footnote 5 of their opinion, they cited two cases which did not involve Public Law 280 states.[9] Both of

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9. Footnote 5 states" The Tenth Circuit has also addressed the authority of the states to execute search warrants and to arrest individuals on reservations. In *United States v. Baker*, 894 F.2d 1144 (10th Cir. 1990), state authorities executed a search warrant on a tribal reservation. The Tenth Circuit concluded that the search warrant was invalid, and therefore the evidence should have been suppressed, because the state had no jurisdiction over the reservation to enforce its laws – including the execution of a search warrant – unless Congress consented to the state's jurisdiction. *Id.* at 1147. See also *Ross v. Neff*, 905 F.2d 1349, 1354-55 (10th Cir. 1990) (holding that the arrest of an Indian on Indian

(continued...)

those cases involve states which are not Public Law 280 states and one of those cases clearly distinguishes itself from any case arising in California.

> Congress has *granted general criminal jurisdiction to some states over Indian country within their borders*, see, e.g., 18 U.S.C. §§ 1162 (various states), 3243 (Kansas), but no such provision has been made for Oklahoma.

*Ross v. Neff*, 905 F.2d 1349, 1352 (10th Cir. Okla. 1990), italics added.

As shown in *Ross*, Oklahoma is a state which has not been granted criminal jurisdiction under the Major Crimes Act. This is a distinct situation from the one found in California where there is no federal jurisdiction to prosecute crimes; the duty to prosecute crimes was expressly delegated to California and five other states.

The Ninth Circuit also seemingly acknowledged the duty of the county district attorney to prosecute but presumed to dictate to law enforcement alternatives to a search warrant in prosecuting welfare fraud. These included serving a search warrant on the offenders in the hope that each offender kept accurate pay stubs or seeking consensual disclosure from the tribes of the offenders. These suggestions encroach on the separation of powers doctrine and demonstrate a woeful lack of experience in the gathering of admissible evidence necessary to prove a criminal case beyond a reasonable doubt. The pay stubs would need to be authenticated with business records and testimony of a custodian of records obtained from the tribe. Further, the authority cited for this approach, *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe* (1991), 498 U.S. 505, 514, 111 S.Ct. 905, 112 L.Ed.2d 1112 (1991) is a civil case where the tribe was being sued

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9. (...continued)
land was illegal because the state had no jurisdiction over the reservation to enforce its laws -- including the execution of a search warrant -- unless Congress consented to the state's jurisdiction)." *Bishop Paiute Tribe v. County of Inyo*, 275 F.3d 893, 911, fn. 5 (9th Cir.Cal. 2002).



civilly for payment of taxes. Once again, the Ninth Circuit attempted to use a case from a state which is not required to prosecute major felonies involving Tribal lands. It is not in any way analogous to a situation where a state is required to prosecute crimes but is deprived of a necessary tool to accomplish this goal.

## CONCLUSION

The clear intent of Congress is to combat lawlessness in Indian country. Since California is required to assume the responsibility of protecting all persons against crimes in Indian country as it does for the rest of the state, the effective tools of law enforcement cannot be discarded. The Ninth Circuit Court's decision should be reversed.

Respectfully submitted,

STEVE COOLEY
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